

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) For Authority to, Among Other Things, Increase Its Authorized Revenues For Electric Service in 2003, And to Reflect That Increase in Rates.

Application 02-05-004
(Filed May 3, 2002)

Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Service and Facilities of Southern California Edison Company.

Investigation 02-06-002
(Filed June 6, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
ADOPTING PROTECTIVE ORDER**

By motion filed on May 3, 2002, Southern California Edison Company (SCE) requests issuance of a protective order governing the use of protected materials produced by SCE in this proceeding.¹ SCE indicates that it has provided confidential workpapers and data request responses to the Office of

¹ The motion was filed concurrently with the captioned application. On June 6, 2002 the Commission ordered the institution of the captioned investigation and consolidation of the investigation and application proceedings. Accordingly, the adopted protective order will be applicable in the investigation as well as the application proceeding.

Ratepayer Advocates (ORA).² The protective order would govern the terms and conditions by which these documents would remain confidential. SCE also indicates that the protective order would apply to any subsequent materials that may be produced with respect to its Notice of Intent or its 2003 general rate application proceeding.

The protective order would also provide for access to SCE's proprietary Results of Operations (RO) model to parties in the proceeding pursuant to Rule 74.4(d)(i) of the Rules of Practice and Procedure. Under that rule, if a party requests access to SCE's RO model, SCE may, at its election, make the requested model runs on its own computer. SCE states that it intends to make the RO model available to third parties pursuant to Rule 74.4(d)(i) of the Commission's computer model access rules.³ Because SCE's RO model is proprietary, SCE requests that the Protective Order cover access to its model.

In its motion, SCE describes three general categories of documents that, in addition to the RO model, would be subject to the proposed protective order:

² Access to these materials by ORA and other Commission staff is subject to and governed by Public Utilities Code Section 583 and General Order 66(c). SCE's proposed protective order will be modified to add clarification that it does not apply to the furnishing of information by SCE to the Commission which is governed by Section 583.

³ At the prehearing conference, SCE's attorney stated that SCE has "invested a lot of time and effort to create a model that will provide all the parties an opportunity to run the scenarios and to do the kind of analysis they would like to do." (Tr. PHC, p. 57.) He went on to state "we will be happy to kind of share our views and that model ... with the parties at the appropriate time." (Id.) Based upon these representations, SCE's RO model (and ORA's and other parties' access to the model) appears to have promise for reducing or eliminating the delays and burdens on parties that have occurred in the past with complex computer models. In the interest of effective and efficient prosecution of this proceeding, I encourage SCE to maintain its efforts to provide ORA, other parties, and the Energy Division with full and effective access to the RO model.

(1) documents that contain proprietary and confidential business information, some of which belong to third parties, (2) documents protected under existing confidentiality agreements; and (3) documents containing sensitive pricing terms or confidential bid information. SCE's request for an order protecting the confidentiality of such materials appears to be consistent with Commission practice. The proposed protective order itself appears to be reasonably calculated to accord such confidentiality while providing parties reasonable access to the protected materials.

No responses to the motion were filed, and at the prehearing conference of June 13, 2002 I stated my intention to grant the motion. (Tr. PHC, p. 4.)

IT IS RULED that:

1. Southern California Edison Company's motion for protective order is granted.
2. The protective order attached hereto is available to and binding on all parties to this consolidated proceeding.

Dated July 3, 2002, at San Francisco, California.

/s/ Mark S. Wetzell

Mark S. Wetzell
Administrative Law Judge

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**PROTECTIVE ORDER
(Issued July 3, 2002)**

1. This Protective Order shall be available to and govern the use of all Protected Materials produced by Southern California Edison Company (SCE) in this proceeding. This Protective Order shall also govern access to SCE's Results of Operations model, which was used to develop SCE's revenue requirement in this proceeding. This Protective Order is not applicable to the furnishing of information by SCE to the Commission which is governed by Public Utilities Code Section 583, nor shall it be construed in such a manner as to limit or restrict such furnishing of information. Notwithstanding any order terminating this proceeding, this Protective Order shall remain in effect until specifically modified or terminated by a Presiding Administrative Law Judge (Presiding Judge), the Law and Motion Administrative Law Judge, or the California Public Utilities Commission (Commission).
2. SCE may designate as protected those materials which customarily are treated by SCE as sensitive or proprietary, which are not available to the public,

and which, if disclosed freely, would subject that Participant or its customers to risk of competitive disadvantage or other business injury.

3. Definitions - for purposes of this Order:

- (a) The term "Participant" shall mean a person or entity that has entered an appearance as a party in A.02-05-004 and I.02-06-002 (SCE's 2003 General Rate Case Proceeding).
- (b) The term "Non-Disclosure Certificate" shall mean the certificate annexed hereto by which Participants who have been granted access to Protected Materials shall certify their understanding that such access to Protected Materials is provided pursuant to the terms and restrictions of this Protective Order, and that such Participants have read the Protective Order and agree to be bound by it.
- (c) The term "Reviewing Representative" shall mean a person who has signed a Non-Disclosure Certificate and who is:
 - (1) an attorney who has made an appearance in this proceeding for a Participant;
 - (2) attorney, paralegals, and other employees associated for purposes of this case with an attorney described in (2);
 - (3) an expert or an employee of an expert retained by a Participant for the purpose of advising, preparing for or testifying in this proceeding;
 - (4) a person designated as a Reviewing Representative by order of the Presiding Administrative Law Judge or the Commission; or
 - (5) employees or other representatives of Participants appearing in this proceeding with responsibility for this docket.

Notwithstanding 3(c)(1-5) above, SCE has the right to refuse to provide a Participant or Reviewing Representative access to Protected Material if grounds

exist such that the Participant or the Reviewing Representative could use Protective Material for commercial or improper usage. If a Participant disagrees with SCE's refusal to provide Protected Material, the Participant may seek resolution under the procedures set forth in Section 10(a).

4. Protected Materials shall be made available under the terms of Protective Order only to Participants and only through their Reviewing Representatives.

5. (a) Protected Materials shall remain available to Participants until the later of the date that an order terminating this proceeding becomes no longer subject to judicial review, or the date that any other Commission proceeding relating to the Protected material is concluded and no longer subject to judicial review.

(b) Within 15 calendar days of such date set forth in Section 5(a), the Participant shall return to SCE the Protected Materials, including notes of Protected Material, copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials, or, upon agreement by SCE, shall destroy the materials in a manner determined by SCE. Within such time period, each Participant shall also submit to SCE an affidavit stating that, to the best of its knowledge, all Protected Materials and documents containing Protected Materials have been returned or have been destroyed.

6. All Protected Materials shall be maintained by the Participant in a secure place. Access to the model and to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to this Protective Order.

7. (a) Protected Materials shall be treated as confidential by each Participant and by the Reviewing Representative in accordance with the certificate executed pursuant to Section 8. Protected Materials shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of

this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding.

- (b) Reviewing Representatives may make notes of Protected Materials which shall be treated as notes of Protected Materials if they disclose the contents of Protected Materials. Reviewing Representatives may not make copies of Protected Materials unless agreed to by SCE. Any such copies become Protected Materials.

8. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials pursuant to this Protective Order unless Reviewing Representative has first executed a Non-Disclosure Certificate. A copy of each Non-Disclosure Certificate shall be provided to counsel for the Participant asserting confidentiality and to SCE prior to disclosure of any Protected Material to that Reviewing Representative.

9. Any Reviewing Representative may disclose Protected Materials to any other Reviewing Representative as long as the disclosing Reviewing Representative and receiving Reviewing Representative both have executed a Non-Disclosure Certificate. In the event that any Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged in these proceedings, or is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative under Paragraphs 3(c), access to Protected Materials by the person shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Order and the certificate.

10. (a) Subject to Section 15, the Commission, Presiding Administrative Law Judge, or Law and Motion Administrative Law Judge, as appropriate, shall resolve any disputes arising under this Protective Order. Prior to

presenting any dispute under this Protective Order to the Commission, Presiding Administrative Law Judge, or Law and Motion Administrative Law Judge under Resolution ALJ-164 or the Commission's Rules of Practice and Procedure, the parties to the dispute shall meet and confer and use their best effects to resolve the dispute.

- (b) Any Participant that contests the designation of materials as protected shall notify SCE by specifying in writing the materials whose designation is contested. This Protective Order shall continue to apply to such materials after the notification is made. The Participant may seek resolution of the dispute under the procedures set forth in Section 10(a). If the Commission, Presiding Administrative Law Judge, or Law and Motion Administrative Law Judge finds that the materials at issue are not entitled to protection, the procedures of Section 15 shall apply.

11. All copies of all documents reflecting Protected Materials that are filed with the Commission, including the portion of the hearing testimony, exhibits, transcripts, briefs and other documents which refer to Protected Materials, shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Order. Such documents shall be marked "PROTECTED MATERIALS" and shall be filed with the Commission under seal and served under seal upon the Presiding judge.

If any Participant desires to include, utilize or refer to any Protected Materials or information derived there from in testimony or exhibits during the hearing in these proceedings, such Participant shall first notify both Counsel for SCE, the Commission, or the Presiding judge of such desire, identifying with particularity each of the Protected Materials. Thereafter, use of such Protected Material will be governed by procedures determined by the Commission or the Presiding Judge.

12. Nothing in this Protective Order shall be construed as precluding SCE from objecting to the use of Protected Materials on any legal grounds.

13. Nothing in this Protective Order shall preclude any Participant from requesting the Presiding Judge, the Commission, or the Law and Motion Administrative Law Judge or any other body having appropriate authority, to find that this Protective Order should not apply to all or any materials previously designated as Protected Materials pursuant to this Protective Order.

14. All Protected Materials filed with the Commission, the Presiding Judge, or the Law and Motion Administrative Law Judge, or any other judicial or administrative body, in support of, or as a part of, a motion, other pleading, brief, or other appropriate containers bearing prominent markings indicating that the contents include Protected Materials subject to this Protective Order.

15. If the Commission, Presiding Judge, or the Law and Motion Administrative Law Judge finds at any time in the course of this proceeding that all or part of the Protected Materials need not be protected, those materials shall, nevertheless, be subject to the protection afforded by this Protective Order for seven (7) business days from the date of the decision unless, within such period, a party files a rehearing request or an interlocutory appeal on that finding with the Commission, in which case the materials shall remain protected until seven (7) business days after the final order resolving the question of confidentiality. SCE and the Participants do not waive their rights to seek additional administrative or judicial remedies after the Commission's or the Presiding Judge's or the Law and Motion Administrative Law Judge decision respecting Protected Materials or Reviewing Representatives, or the Commission's denial of an appeal or rehearing thereof.

16. SCE does not waive the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Materials.

17. Contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with this Protective Order and shall be used only in connection with this proceeding. Any violation of this Protective Order and any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

18. For confidential information that contains extremely sensitive commercially sensitive information for which a producing Participant believes "Protected Materials" status would not provide sufficient protection, a producing Participant may designate and mark the documents "Protected Materials – Government Eyes Only" in which case the documents can only be produced and reviewed by federal or state government representative or the Staff. A participant may therefore not refuse to produce any document, which is required by a Reviewing Representative of a federal or state government agency and relates to the subject matter of the application, on the grounds that it is commercially sensitive information.

Administrative Law Judge

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NON-DISCLOSURE CERTIFICATE

(to be executed by a Reviewing Representative for access to Protected Materials)

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Order. I acknowledge that a violation of this certificate constitutes a violation of an order of the California Public Utilities Commission.

By:

Title:

Representing:

Date:

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Adopting Protective Order on all parties of record in this proceeding or their attorneys of record.

Dated July 3, 2002, at San Francisco, California.

/s/ Antonina V. Swansen

Antonina V. Swansen

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.